

App. Serial No.: 10/815,376
Atty. Docket No.: 0061-011

REMARKS

These remarks are in response to the final Office Action dated July 13, 2007, which has a shortened statutory period for response set to expire October 13, 2007. A two-month extension, to expire December 13, 2007, is requested in a petition filed herewith.

Claims

Claims 1-42 are pending in the above-identified application. Claims 1-42 are rejected over prior art. Claims 1, 37, and 42 are amended, and Claims 2-36 and 38-41 remain as filed or previously presented. Reconsideration is requested.

Rejections Under 35 U.S.C. § 102 and §103

Claims 1-2, 7-31, 33-36, and 42 are rejected under 35 U.S.C. § 102 (b) as being anticipated by U.S. Patent No. 5,215,508 (Bastow). Claims 3-6, 32, and 37-41 are rejected under 35 U.S.C. §103(a) as being unpatentable over Bastow in view of Applicants' specification.

The claims are amended herein, according to agreement reached in an Examiner interview, to obviate the outstanding rejections. The amendments are not an admission with respect to the propriety of the outstanding rejections. Rather, the amendments are the result of a cooperative effort between the Examiner and Applicants' attorney to expedite the prosecution of this application.

Interview Summary

The above-mentioned examiner interview was held on November 29, 2007. Examiner Brandon Jackson, Examiner Teena Mitchell, and Applicants' attorney Larry Henneman participated in the interview. Applicants appreciate the Examiners' time and the cooperative spirit of the interview.

The rejections over Bastow were discussed. Mr. Henneman argued that the cylinders (6, 7) of Bastow did not "bias said lower leg engaging apparatus and said foot engaging apparatus away from each other," as recited for example in Claim 1. Examiner Jackson argued that when the patient moves his foot, the cylinders of Bastow exert a force against the motion and, therefore, push the foot engaging apparatus away from the leg engaging apparatus. Mr. Henneman responded that the cylinders provide resistance only. The cylinders never exert a

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force greater than that applied to them and cannot, therefore, push the foot engaging apparatus away from the leg engaging apparatus.

Examiner Jackson, Examiner Mitchell, and Mr. Henneman discussed alternative language that would distinguish the claimed biasing member from the resistance cylinders of Bastow. It was noted that the cylinders of Bastow do not always exert a force. For example, when the patient is not moving his/her foot, the cylinders of Bastow do not exert any force. Examiner Mitchell suggested adding the following language to Claim 1: "said biasing member exerting a continuous force." It was agreed that this limitation overcomes the rejections over the prior art of record.

Mr. Henneman agreed to file a Request for Continued Examination with an amendment to add the agreed upon language to Claim 1. Mr. Henneman also agreed to add similar language to the other independent claims.

Examiner Jackson stated the search performed in this case was thorough, but that an updated search would be required prior to allowance. If no more relevant prior art is discovered, this application will be allowed. If any newly discovered prior art raises an issue with respect to the patentability of the pending claims, Examiner Jackson agreed to contact Mr. Henneman prior to issuing another office action.

Again, Applicants and Mr. Henneman want to thank Examiner Jackson and Examiner Mitchell for their constructive assistance in the prosecution of this application.

Amended Claims

Claims 1, 37, and 42 are the only independent claims in the application. All remaining claims depend, either directly or indirectly, from one of these independent claims.

Claim 1 and Claim 37 are amended to each recite (in part): "said biasing member exerting a continuous force." Claim 42 is amended to recite (in part): "means for continuously pushing."

Support for the amendments can be found in Applicants' original specification at least at Page 9, Lines 23-27 and Fig. 9.

For the above reasons Applicants request reconsideration and withdrawal of the current rejections under 35 U.S.C. §102 and §103.

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For the foregoing reasons, Applicants believe Claims 1-42 are in condition for allowance. Should the Examiner undertake any action other than allowance of Claims 1-42, or if the Examiner has any questions or suggestions for expediting the prosecution of this application, the Examiner is requested to contact Applicants' attorney at (269) 279-8820.

Respectfully submitted,

Date: 12/13/07

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CERTIFICATE OF FACSIMILE TRANSMISSION (37 CFR 1.8(a))

I hereby certify that this paper (along with any referred to as being attached or enclosed) is being transmitted via facsimile, on the date shown below, to: MS Amendment, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450, at (571) 273-8300.

Date: 12/13/07

Larry E. Henneman, Jr.

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